

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| LOCAL 1312, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, DOVER, NEW HAMPSHIRE | : | |
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| Complainant | : | CASE NO. <u>F-0102:1</u> |
| | : | |
| v. | : | |
| | : | DECISION NO. <u>79021</u> |
| | : | |
| CITY OF DOVER, NEW HAMPSHIRE | : | |
| | : | |
| Respondent | : | |

APPEARANCES

Representing the Complainant, Local 1312, IAFF:

Clyde R. Coolidge, Esquire, Counsel
Bruce W. Roderick, President, Local 1312
Douglas Conway, Member Local 1312

Representing the Respondent, City of Dover:

Wayne E. Murray, Esquire, Counsel
Scott E. Woodman, City Attorney
Dr. Robert Krutzer, Professor Physical Therapy, UNH
Dr. Daniel Jones, Director of Physical Therapy, Portsmouth Rehab. Center
R. Peter Taylor, Esquire
Julia Dudney, Physical Therapist & Tester, Portsmouth Rehab. Center
Barry Bush, Executive Director, N. H. State Fire Atty. Counsel
David Bibber, Chief

BACKGROUND

On July 9, 1979, Local 1312, IAFF, through its President, Bruce W. Roderick, filed an affidavit of violation under the provisions of RSA 273-A:5, I (h) alleging that the City of Dover, more specifically Chief David Bibber, on June 26, 1979, instituted a mandatory physical fitness program which provided in part that failure of the officers to participate in the program would lead to disciplinary action, and that neither the City nor the Chief had negotiated this condition of employment with representative of Local 1312 thereby breaching the existing collective bargaining agreement.

After efforts by the Local failed to have the program delayed until a grievance could be heard, the Local filed a formal grievance on or about June 22, 1979, action on which is still pending and could conceivably take up to 93 days to complete. On June 28, 1979, the Local petitioned Stratford County Superior Court for a temporary restraining order enjoining the City from implementing the program. Hearing was held on July 6, 1979 and no action was taken by the Court who marked the case for a later hearing.

Hearing on the case was held in the Board's offices on July 26, 1979 and testimony was presented by Attorney Murray on behalf of the City who argued that such programs directly affected the public right of fire protection and was strictly managerial and outside the scope of collective bargaining. In addition, that a reference to the situation was contained in the current contract language, specifically in Article IX, Section 2, dealing with the principle of salary increases based upon merit and including along with the work habits, job performances, knowledge of duties, etc. and "an objective rating relating generally to a physical standard".

The City stressed at great length the necessity of firefighters being physically fit because of the physical demands of their job and that they (City) had a legitimate interest in assuring that good physical standards were maintained by the firefighters. Counsel for the City in his arguments also cited several cases dealing with the subject matter.

The Firefighters from Local 1312 through their Counsel, Attorney Clyde Coolidge, argued that the subject of required physical fitness training program was a negotiable item under the existing contract and that the program was originally initiated by Chief Bibber without negotiations or approval from Local 1312 and quoted Article III, Section 1, of the existing contract, "Recognition" which states:

"The City hereby recognizes the Union as the sole and exclusive representative of employees of the Dover Fire Department, listed in Appendix A, and exclusive of employees of the rank of Lieutenant through Chief. The Union is recognized for the purposes of collective bargaining with respect to wages, fringe benefits, hours and duty and conditions of employment, (emphasis added)...."

and Article IX, Section 2, which discusses ratings as outlined above. Attorney Coolidge argued that the implementation of the physical fitness program was not managerial prerogative and that the requirement for firefighters to be physically fit was originally negotiated with respect to the annual rating of firefighters and that any change should be negotiated.

After reviewing the written and oral evidence presented by the parties at the hearing, the Board makes the following findings:

FINDINGS

1. Current contract between the City of Dover and Local 1312, IAFF, makes specific reference to a physical standard in Article IX, Section 2, in connection with the principle of salary increases based upon merit.
2. The contract is silent however as to the specifics or standards in the physical fitness test.
3. Witnesses for the firefighters testified that the program was a good one and would undoubtedly be continued after review and decision on the case by PELRB.
4. The principal objection to the program is that the City had, in some instances, refused to purchase or reimburse the firefighters

ror running shoes and other clothing necessary for the program, because the clothing allowance given each firefighter had been exhausted.

5. The City indicated they were willing to purchase the necessary equipment however depending on the availability of funds.
6. The physical training program is geared to each firefighter's ability to physically accomplish it.
7. The program had been discussed by the Chief and Union President Roderick on June 10, 1979 and the training package generally agreed with the proviso that necessary equipment would be purchased through the clothing allowance.
8. Local President Roderick agreed that certain standards of physical fitness are desirable and indicated that, "the Union is not before this Board opposing a physical fitness program, we are in favor of a 'bargained for' physical program. The Union wants to bargain over equipment."
9. Concern was expressed by the firefighters over the possibility of disciplinary action in connection with the program. No evidence of any such action was submitted at the hearing. Should action of this nature be taken, protection is afforded the firefighters in their contract language covering grievable matters and further, access to this Board.
10. The full grievance procedure has not been exhausted at this time and PELRB is reluctant to inject itself when all procedures have not been exhausted. Avenue still open to the firefighters is thru arbitration which in accordance with the contract is final and binding on both parties to the agreement, with costs incurred shared equally by the parties.

DECISION AND ORDER

The Board at its hearing on August 23, 1979 unanimously ruled as follows:

- A. The Board declines to find unfair labor practices against the City of Dover for implementing a mandatory physical fitness program within the Fire Department.
- B. The subject of supplying equipment and its cost for the physical fitness program MUST be the subject for negotiations between the parties.

Dated: September 7, 1979


EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

By unanimous vote. Chairman Edward J. Haseltine presiding. Present and voting, members Cummings, Moriarty, Anderson and Mayhew. (August 23, 1979)

Counsel for the Fire Fighters reaffirmed their position taken at the original hearing alleging that the whole issue of physical fitness and physical standards were in fact a negotiable item and not a matter reserved solely to management. Counsel repeated the Local's position that a requirement for a physical fitness program was desirable and all they were seeking was the opportunity to negotiate the equipment and method of implementing the training program.

DECISION AND ORDER

In clarification of its Order, this Board finds:

1. The requirement of a physical fitness program comes within the scope of managerial policy.
2. The implementation of such a program MUST be the subject of negotiations between the parties.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 25th day of September, 1979

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LOCAL 1312, INTERNATIONAL ASSOCIATION :
OF FIRE FIGHTERS, DOVER, NEW HAMPSHIRE :

Complainant :

v. :

CITY OF DOVER, NEW HAMPSHIRE :
FIRE DEPARTMENT :

Respondent :

CASE NO. F-0102:1

DECISION NO. 79021 AMENDED

CLARIFICATION

By mutual agreement of the parties at an informal meeting, October 22, 1979, between a representative of PELRB, the City Manager, the Chief of the Fire Department, the President of Local 1312, Attorney Coolidge representing Local 1312, and Attorney Murray representing the City of Dover, a request was initiated to the Board for clarification of the meaning of the word "implementation" contained in PELRB Order No. 79021 as amended September 25, 1979.

The parties further agreed to waive any hearing requirement in connection with the interpretation request and agreed that the interpretation should be based on the facts presently before the Board in this matter.

The following are the issues referred to the Board for clarification relative to their negotiability or non-negotiability and the Board's ruling on each issue.

ISSUES

PELRB RULING

- | | |
|---|----------------|
| 1. Question of physical exams, when? frequency? and how complete | Non-negotiable |
| 2. Necessity of City to furnish a specific clothing allowance to maintain the equipment for the program, which also includes the type of clothing, shoes and other gear which will be required | Negotiable |
| 3. Time on a shift when the physical fitness program shall be performed | Non-negotiable |
| 4. Place where the physical fitness program shall be performed; for example, the men feel that the Central Fire Station has no adequate place and an employee was injured prior to the Chief's arrival a couple of years ago in doing physical fitness and is still laid up | Non-negotiable |

ISSUES

PELRB RULING

- | | | |
|-----|---|----------------|
| 5. | Manner of conducting the physical fitness program; such as, who shall do it, the uniformity of requirement on shifts, and so forth | Non-negotiable |
| 6. | Method of mutually reviewing the program periodically to find if it is meeting its objective and criteria | Non-negotiable |
| 7-A | Type of medical excuses which should be acceptable to excuse someone from the program and for what reasons | Negotiable |
| B | Negotiations should also include possible alternatives to the regular physical fitness program in case a fire fighter is unable to perform it | Non-negotiable |
| 8. | Duty of the line officers so far as the physical fitness program is concerned and also leading the men at time of fires. | Non-negotiable |



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 5th day of November, 1979

Chairman Edward Haseltine presiding. Also present Cummings and Moriarty. Evelyn C. LeBrun, Executive Director and Bradford Cook, Counsel also present.